IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3784 OF 2005

Jayendra Ashok Bhagat @ Jayu. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri Rajendra Sorankar for the Applicant.

Ms.M.M.Deshmukh, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 27th June, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned A.P.P. for the Respondent.

2. The Applicant has been arraigned as a co-accused along with others in an offence registered under sections 365, 324, 323, read with section 34 of the Indian Penal Code registered at Ram Nagar Police Station, Dombivli (East). Later on section 307 of the IPC along sections 3, 2(1)(a) of the Arms Act were incorporated. The Applicant was arrested on 16th September 2003 and since then he is in custody.

3. The case of the prosecution is that the Complainant Ganesh and his cousin Vikram were running a grocery shop at Thakurli East, Dombivali, District Thane. One Dinesh Patil used to take various articles on credit from the said grocery shop. The said Dinesh Patil is a

co-accused along with the Applicant. The Complainant's cousin did not give articles to the said Dinesh Patil as he had not paid cost of articles supplied to him earlier to the tune of Rs.7,000/-. The case of the Complainant is that later on a servant of Dinesh Patil paid Rs.5,000/-. The allegation is that on 27th May 2003 at 7.00 p.m. the Accused came to the shop premises and dragged his cousin out of the shop. They took away cousin of the Applicant in a fiat car. The allegation is that the said cousin of the Complaint was assaulted with a wooden stick and leather belt. Later on it was alleged by the injured person that the Applicant fired at him by a revolver.

4. The learned Adhoc Additional Sessions Judge, Kalyan rejected the application for bail filed by the Applicant. The learned Advocate for the Applicant submitted that the injuries on the victim are simple bruises and abrasions and there is no injury suffered due to bullet. He submitted that all the three co-accused are released on bail. He submitted that the Applicant is in custody on almost for last about 21 months and therefore, he is entitled to be enlarged on bail.

5. The learned A.P.P. submitted that there was a recovery of revolver from the spot of the incident. The learned A.P.P. submitted that there are some complaints

registered against the Applicant in other parts of Thane District, and therefore, the Applicant is not entitled to be enlarged on bail.

6. I have considered the submissions. In the first part of the complaint made by the Complainant Ganesh, the Applicant is not specifically named. However, in the second part of the said complaint, the Applicant's name style as "Jayu" appears. It is obvious from the description of the injuries sustained by the victim that there are no bullet injuries on the victim. As stated earlier there are six bruises, two Haematoma, and one abrasion. It is doubtful whether the offence under section 307 of the IPC is made out. The Applicant is in Custody for more than 1-1/2 years. Considering the fact that the Applicant is in custody for such a long time and considering the prosecution case, the Applicant is entitled to be enlarged on bail. However, as there are other offences registered against the Applicant in Thane District, the Applicant will have to be enlarged on bail subject to condition that the Applicant will not enter the Thane District till conclusion of trial save and except for attending the Court.

7. Hence the following order is passed:

(i) The Applicant shall be enlarged on bail subject to condition of the Applicant

furnishing P.R.Bond in the sum of Rs.25,000/- with two sureties in the like amount.

(ii) The Applicant shall be enlarged on bail subject further condition that the Applicant shall not enter the limits of Thane District till conclusion of the trial without seeking prior permission of the trial Court. However, the Applicant will be entitled to enter the District Thane only for the purpose of attending the Court on the dates fixed for trial.

(iii) The Applicant shall submit his complete address of the place of his new residence and telephone number, if any, to the Superintendent of the concerned Jail. Effect will be given to this order only after the Applicant furnishes his address.

(iv) The Bail is granted subject to the further condition that the Applicant will attend the local Police Station once in a week till conclusion of the trial.

(v) The Applicant will not make any attempt whatsoever to influence or threaten the

prosecution witnesses and/or to tamper with the prosecution evidence.

(vi) The Application is disposed in the above terms.

(vii) The parties to on an authenticated copy of this order.

Judge.